

**BUDGETING FOR THE LEGAL REGULATION OF CANNABIS FOR
ALL CITIZENS OF SOUTH AFRICA**

**SUBMISSION BY FIELDS OF GREEN FOR ALL NPC
TO THE SELECT AND STANDING COMMITTEES ON APPROPRIATION**

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Fields of Green for ALL would like the opportunity to address the committee in person, represented by Myrtle Clarke and one of our legal team.



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1. WHY THIS SUBMISSION?

Cannabis legalisation is an intricate process that will involve many stakeholders in South Africa. It is imperative that our government is given meaningful input from those within the current unregulated Cannabis industry. We are the “*previously disadvantaged*” as we move towards policies that end our criminalisation.

Fields of Green for ALL is appreciative of this opportunity to make this submission **in response to the Medium Term Budget Policy Statement (MTBPS) delivered on 30 October 2019 by the Minister of Finance.**

In particular, we request that the National Assembly and National Council of Provinces’ Appropriations Committees, in their reports that are required in terms of the Act (2019 Adjustments Appropriation Bill), make room in their budgets for the implementation of Cannabis regulations.

To date, civil society has carried the cost of Cannabis legalisation efforts. Fields of Green for ALL is, to date, entirely funded by the Cannabis community in South Africa and members of our Cannabis culture internationally. It is with some dismay that, upon studying the figures contained within the Bill, **there are large sums of money that have not been spent by government departments that could have been used to start the development of a legal Cannabis industry in South Africa.**

The South African government will have to be completely committed to allocating some of their budgets to Cannabis research and development in the very near future. We understand that the appropriations are complete for 2019 and it is too late for this round of budgets but we implore the committee to consider this issue in the future and **support government departments to spend wisely and reap the benefits that legal Cannabis has to offer, both socially and economically.**

2. RESPONSIBILITIES OF GOVERNMENT DEPARTMENTS

Fields of Green for ALL has identified the following government departments that will have very important roles to play in the legal regulation of Cannabis in South Africa. At present there is no coherent plan (of which we are aware) on the part of government to address the issue of how Cannabis is going to be legalised in South Africa. There are many government departments on this list, and we submit that it will be a massive undertaking to coordinate the work across all these platforms.

According to ***Schedule 1 contained within the Adjustments Appropriation Act, 2019***¹ and with reference to the government departments to follow, the monies indicated as unspent and returned to the Treasury could have been used in the following ways within a legal Cannabis framework and for the benefit of many citizens.

¹ [http://www.treasury.gov.za/legislation/bills/2019/\[B16-2019\]%20\(Adjustments%20Appropriation%20Bill\).pdf](http://www.treasury.gov.za/legislation/bills/2019/[B16-2019]%20(Adjustments%20Appropriation%20Bill).pdf)

With regards appropriation of budgets unspent, Fields of Green for ALL notes the following:

GOVERNMENT DEPARTMENT	BUDGET UNSPENT	POTENTIAL FOR CANNABIS DEVELOPMENT
The Presidency	(9 450) Executive Support	It is essential that the office of our president is fully informed of all the ramifications of Cannabis legalisation and is appraised of evidence in order that countless misconceptions are dispelled. This can be done by providing executive support from leading national & international experts.
Agriculture, Forestry & Fisheries	(52 800) Total / (36 769) Production, Health & Food Safety / (21 123) Food Security & Agrarian Reform	Agriculture must allocate sufficient funds from its budget to ensure that small farmers benefit from Cannabis legalisation and also allocate funds for research & development of a Southern African "Hemp" industry without relying on imported genetics.
Arts & Culture	(45 400) Total / (5 400) Administration / (40 000) Heritage Promotion & Preservation	Cannabis Culture is a vibrant part of SA society. The department must allocate funds from its budget to ensure the protection and promotion of this sector as it is the ONLY cultural group that represents ALL South Africans.
Cooperative Governance & Traditional Affairs	(371 233) Total / (64 933) National Disaster Management / (364 990) Community Work Programme	There is a grave danger of the former Bantustans becoming "captured" by foreign interests and this department must allocate funds from its budget to ensure that the intellectual property and indigenous knowledge systems remain in the hands of the people.
Correctional Services	(90 756) Total / (100 428) Incarceration / (37 857) Social Reintegration	This department must use funds from its budget to do an extensive audit of prisoners incarcerated for non-violent Cannabis offenses so that these people may be released immediately with no conditions.
Economic Development	(55 750) Total / (5 170) Administration / (624) Growth Path & Social Dialogue / (49 956) Investment, Competition & Trade	The potential for Cannabis to contribute significantly to economic development is obvious. This department must consult with experts to determine the scale and implementation of this development.

Education / Higher Education & Training	(458 473) Total / (12 497) Planning, Policy & Strategy / (325 263) Technical & Vocational Education & Training / (1 500) Skills Development / (147 937) Community Education & Training	Education and awareness raising will be key to the successful implementation of Cannabis regulations. This department must allocate budget funds to re-write "drug education" to be based on evidence. This department must also allocate budget funds for the development of curriculums for Cannabis industry education & training.
Energy	(256 464) Total / (1 781) Administration / (3 000) Policy & Planning / (914) Petroleum / (250 000) Electricity etc / (769) Nuclear	Cannabis has the potential to be the source of renewal energy in the form of biofuel. This department must allocate significant resources into research & development of this potential.
Environmental Affairs	(46 000) Total / (50 000) Environmental Programmes	Cannabis has the potential to alleviate environmental degradation through the regenerative properties of the plant. Budget allocations for this are necessary. This department must also be charged with ensuring that large indoor production facilities do not add to our country's environmental woes.
Health	(265 527) Total / (111 108) National Health Insurance / (210 127) Diseases / (900) Primary Health Care	This department must broaden its scope within the Cannabis legalisation paradigm as, currently, it is focused on the work of SAHPRA and a licensing system for Cannabis health products that are out of the reach of the majority of South Africans. Focus on Cannabis' contribution to primary health care and traditional medicine is key.
International Relations & Cooperation	(25 625) International Cooperation / (4 055) Public Diplomacy & Protocol Services	This department must allocate budget funds to the development of a rational policy of international cooperation in the Cannabis legalisation paradigm.
Justice & Constitutional Development	(88 000) Court Services	This department must ensure that Cannabis laws & regulations pass Constitutional muster and are based on evidence and placed in a strictly South African context.
Labour	(1 934) Total / (10 798) Policy & Industrial Relations	The department of labour must ensure that all workers in the Cannabis industry are covered by the existing labour laws and these laws are strictly enforced

National Treasury	(79 359) Total et al	This department must ensure that the economic benefits of Cannabis legalisation are equitably distributed.
Rural Development & Land Reform	(117 294) Total / (104 608) Rural Development / (14 822) Restitution	The former Bantustans of South Africa are the main Cannabis cultivation areas. This department has an enormous responsibility to the rural people of South Africa.
Science & Technology	(4 793) Total / (15 093) Administration	Science and technology are at the heart of South Africa's potential to be a world leader in the Cannabis industry. This department must allocate significant funds to research and development of a 21st century South African Cannabis industry.
Small Business Development	(300 000) Total / (3 300) Sector Policy & Research / (298 100) Enterprise Development & Entrepreneurship	This department is key to ensuring that small scale, craft and rural Cannabis cultivators and traders are given the support that they will need to remain relevant within a legal Cannabis paradigm and budget funds must be allocated accordingly.
Social Development	(70 000) Total / (60 000) Social Security Policy & Administration / (10 000) Welfare Services	This department has been at the forefront of opposition to Cannabis policy reform & shown a surprising lack of knowledge of the issue. Budget funds must be allocated to ensuring that staff are fully re-trained in the intricacies of 21st century drug policy.
SA Police Service	(768 047) Total / (3618) Administration / (764 429) Detective Services	As the SAPS will no longer be required to police Cannabis use, cultivation and trade, this department must restructure its budget to allocate resources to fighting serious crime in South Africa. This department must also allocate funds to fighting corruption, dismantling their quota system with regards drugs & retraining officers.
SA Revenue Service	No figures provided	SARS will benefit greatly from Cannabis legalisation.
Tourism	(4 380) Sector Support Services	Tourism will benefit greatly from Cannabis legalisation and this department must allocate budget funds for the development of this sector.

Trade & Industry	(11 414) Special Economic Zones & Economic Transformation / (72 731) Incentive Development & Administration	This department have shown the greatest appetite of any SA government department for Cannabis legalisation. Budgets should be adjusted to note specific requirements of the Cannabis industry.
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3. A SUGGESTION FOR THE WAY FORWARD

A concise, inter-governmental plan is needed and Fields of Green for ALL proposes that all stakeholders and interested parties contribute to a national survey. It is envisaged that the **South African National Cannabis Survey** would fill the gaps in the evidence needed to ensure that the **most vulnerable in our society reap the social and economic benefits of Cannabis legalisation**. With a more intimate knowledge of Cannabis '*on the ground*', the results of the survey can contribute to the development of policies that proactively promote poverty alleviation and help address structural inequality, social exclusion, injustice and discrimination. Fields of Green for ALL has developed a concept proposal for the survey and we look forward to sharing this with all interested and affected parties soon. Fields of Green for ALL is partnering with Social Surveys Africa² to fund raise and develop the survey,

Without a study of this nature that allows for a much greater understanding of the sector, taking into account all stakeholders involved, the structural inequalities that still abound after 25 years of democracy are likely to be replicated in the Cannabis industry after legalisation. This survey is necessary in order to create objective, evidence-based regulations for the cannabis industry so that we can encourage well informed, responsible use and foster positive economic growth in South Africa. Cannabis can help to bring about economic freedom in South Africa and every citizen deserves to benefit.

4. AFFILIATE ORGANISATIONS ENDORSING THIS SUBMISSION

Fields of Green for ALL started a **petition for the legalisation of Cannabis in South Africa** in 2013. Despite challenges around the security of collecting the required ID numbers for parliament, we have 33 168 signatures to date.³ Were we not required to supply valid SA ID numbers for parliament, this number would be significantly larger. Hence the need for a statistically robust survey.

Fields of Green for ALL relies on the generosity of our supporters for the administration of our organisation. We have, to date, 26 local affiliate donor companies⁴ and 42 international affiliate support organisations⁵ that we work with. Local organisations form the foundation of our outreach programmes and it is these organisations who will join us in taking our vision for an inclusive Cannabis industry forward. There are many more organisations who are well aware of and support our work, but lack of resources has always hampered our efforts at closer collaboration.

² <https://socialsurveys.co.za/>

³ <https://fieldsofgreenforall.org.za/petition/>

⁴ <https://fieldsofgreenforall.org.za/sa-affiliates-2/>

⁵ <https://fieldsofgreenforall.org.za/international-affiliates/>



- Social Surveys Institute
- African Bushdoctorz
- Afristar Foundation
- Cannabis Development Council of South Africa – CDCSA
- Cannabis Industry Development Cooperative Western Cape – CIDCWC
- Rastafarai United Front – RUF
- SA Drug Policy Initiative - SADPI
- The Traditional and Natural Health Alliance - TNHA
- Traditional Healers Organisation - THO
- Umzimvubu Farmers Support Network - UFSN
- Drug Policy Week

Fields of Green for ALL also has numerous experts who advise us, over and above our experts for The Trial of the Plant⁶, who provided the bulk of the scientific evidence needed to achieve our aims.

5. BACKGROUND & CONTEXT

1.1 Legal Context

This submission is informed by work done by Fields of Green for ALL, since 2013, in the field of Cannabis legalisation. After being arrested in their home on charges of “possession and dealing in drugs” in 2010, two of the founding directors of this non-profit company, Myrtle Clarke and Julian Stobbs, better known as The Dagga Couple, accused 7 South African government departments of enacting and enforcing unlawful Cannabis (Dagga) laws⁷. Their case was rendered part heard in 2017 and in 2018 they intervened in the state’s appeal to the Western Cape High Court ruling that declared that the prohibition of Cannabis for the private use and cultivation of Cannabis in private spaces is unconstitutional. The appeal was heard in the Constitutional Court of South Africa and the judgment handed down by Judge Zondo on 18 September 2018, in favour of the plaintiffs/applicants, upheld Judge Davis’ ruling in the Western Cape High Court. The apex court gave the government 24 months to amend the law.

The ministers of the government departments who continue to oppose the plaintiffs in “The Trial of the Plant”⁸, as it has become known, in the Pretoria High Court are:

- National Director of Public Prosecutions
- Minister of Justice and Constitutional Development
- Minister of Health
- Minister of Social Development
- Minister of International Relations and Cooperation
- Minister of Police
- Minister of Trade and Industry (Indicated in 2011 that the DTI would abide by the decision of the court)
- The defendants above were joined by an 8th plaintiff, Doctors for Life International⁹ in 2012

⁶ <https://fieldsofgreenforall.org.za/expert-witnesses/>

⁷ <https://fieldsofgreenforall.org.za/stay-prosecution-granted-pretoria-high-court/>

⁸ <https://fieldsofgreenforall.org.za/fields-of-green-for-all-legal/>

⁹ <https://www.doctorsforlife.co.za/>

Litigation is expensive and time consuming and, to this end, the plaintiffs in The Trial of the Plant in the Pretoria High Court do not have an appetite to keep fighting this matter in court. They have been given leave to postpone the trial *sine die* by Deputy Judge President of the Pretoria High Court, Judge Aubrey Ledwaba. However, the judge has advised that, should the South African government not produce evidence-based Cannabis regulations that pass constitutional muster, the door is open for the continuation of the legal action in order to achieve Cannabis regulations that benefit ALL South Africans.

This submission is endorsed by the attorneys for The Dagga Couple and Fields of Green for ALL, Schindlers Attorneys¹⁰. They can be contacted for any further information with regards the legal action: Paul-Michael Keichel / cannabis@schindlers.co.za / 011-4489600.

1.2 History

The world's first law to prohibit the use of Cannabis was enacted in the then Cape Colony, South Africa, in 1891. The Medical and Pharmacy Act of 1891 classified Cannabis under 'poisons'. In 1908 the first law was put into place prohibiting the sale of Cannabis in South Africa. This was some years before Cannabis was ruled illegal worldwide at the 1928 Hague Conference, thanks to a suggestion by the South African government to the League of Nations about banning 'Indian Hemp'. This was done in order to exert greater control over indentured labour by the colonial government of the time, rather than due to any perceived health risks.

An in-depth timeline of the history of Cannabis prohibition is available on Fields of Green for ALL's website.¹¹ Consideration of the history of Cannabis is essential for the way forward. Cannabis prohibition was used as an instrument of oppression throughout the apartheid era and there has been no attempt on the part of the South African government to repeal what the Cannabis communities of South Africa call "the last apartheid law".

1.3 International Law

South African policies on Cannabis are partly framed by the so-called International Drug Control Conventions (IDCC) which consists mostly of three treaties:

- Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol.
- Convention on Psychotropic Substances, 1971.
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

In addition, a regional enforcement arrangement reinforces the IDCC locally in the form of the Southern African Development Community (SADC) Protocol on Combating Illicit Drugs, 1996.

While governments tend to use the IDCC as an excuse to hamper reform efforts, as outlined in the "Heads of Argument" for The Dagga Couple's intervention in the WCHC case in the Constitutional Court, *"the time for using the conventions against us is over"*. Indeed, it is now largely recognised that *"obligations derived from the drug control Conventions are subordinate to human rights obligations"*¹². Many provisions of the drug control Conventions conflict with Human Rights obligations – which has been demonstrated in concrete by the Constitutional Court of South Africa – but "Human Rights

¹⁰ <http://www.schindlers.co.za/> and <http://www.schindlers.co.za/mr-cannabis-law>

¹¹ <https://fieldsofgreenforall.org.za/history-of-cannabis-prohibition/>

¹² United Kingdom All Party Parliamentary Group for Drug Policy Reform (2015), "Guidance On Drug Policy: Interpreting The Un Drug Conventions" unodc.org/documents/ungass2016/Contributions/Civil/APPG_for_Drug_Policy_Reform/Guidance_print_copy.pdf page 4

violations occurring in the name of drug control can never be justified by States or their defenders as a necessary and unavoidable part of fulfilling international drug control obligations”¹³.

Because Cannabis law reform in South Africa cannot happen in a vacuum, there is a need to examine other drug policies, in other countries. Fields of Green for ALL has been involved on the international stage at several levels to get an international perspective on the subject.

Representatives from Fields of Green for ALL attended the United Nations General Assembly Special Session on Drugs (UNGASS 2016) in New York in 2016 and several sessions of the Commission on Narcotic Drugs, the central legislative organ of the international community on Cannabis-related policies. As active members of the Vienna NGO Committee (VNGOC) and New York NGO Committee on Drugs (NYNGOC) – official organs for participation and provision of inputs to the United Nations drug control programme – we have contributed on several occasions to the ongoing debate on Cannabis, drug policies and the IDCC at the United Nations, providing our vision and updates from South Africa.

5.4 The Harms of Cannabis Prohibition in South Africa

For decades, the prohibition of Cannabis has devastated the lives of millions and disrupted the economic and social fabric of communities, ruining the lives of countless individuals, particularly young people. Since 2009 there have been over two million people (2 180 583) arrested for drug related crimes, an estimated 90% of those arrests are for Cannabis¹⁴. This means that an estimated 1 962 525 people have been subjected to the trauma of arrest and incarceration over the past ten years alone. The overwhelming number of arrests have been for non-violent Cannabis offenses, with the majority being for possession of small amounts. Arrest rates for Cannabis have declined since the September 2018 Constitutional Court judgment but arrests and incarceration, mostly with no potential for conviction, are ongoing. The SAPS often continue to abuse the grey area to intimidate and, ultimately, solicit bribes.

6. CIVIL SOCIETY SHOWING THE WAY

In the context of the history of Cannabis prohibition, the increasing options available in terms of international law, and ongoing litigation, Cannabis legalisation is inevitable in South Africa.

However, it is precisely *how* Cannabis will be legally regulated that concerns the authors of this submission. It is because of this grave concern that Fields of Green for ALL will soon be publishing ***“Cannabis, the People’s Plant – A Full Spectrum Manifesto for Policy Reform.”***¹⁵

This publication will be intended as a concise and thorough outline of all the issues that face legislators within the Cannabis legalisation space. It is written from the perspective of civil society and the knowledge and experiences of South Africa’s Cannabis community who have suffered under prohibition for so long.

Complex and interconnected histories of prohibition, colonialism and imperialism continue to affect the protection of genetic resources and the traditional knowledge of Cannabis in Africa. As Cannabis moves from the unregulated market to a (potentially) multi billion Rand legal industry, the role that *“Legacy”* communities – indigenous people, traditional healers, rural farmers, informal traders,

¹³ Lines, Richard (2017), "Drug Control and Human Rights in International Law" Cambridge University Press, 2017. DOI: 10.1017/9781316759707. Preface, p. XV.

¹⁴ https://www.youtube.com/watch?v=JCljVrjr_Zc

¹⁵ <https://fieldsofgreenforall.org.za/regulations/>

unregulated cultivators - have played in the cultivation and protection of Cannabis genetic resources and related traditional knowledge must be adequately addressed.

With an estimated 900 000 Cannabis farmers in South Africa¹⁶, who collectively support upwards of 3 million people, Fields of Green for ALL seeks to make a socio-economic case for legalised regulation that will help address the massive unemployment problem in our country, as well as drastically reduce poverty. The estimated number of Cannabis users in South Africa is 20 million. Cannabis use & trade is all pervasive in South Africa and on the African continent. From rural and township communities to wealthy suburban citizens and all who use the plant for a variety of reasons. The problem is that, although we have a large, active and vibrant Cannabis economy in South Africa, **all economic activity related to Cannabis is still illegal** and therefor condemns millions of cultivators, traders and users to operate outside of the law.

South Africa is currently sitting with an unemployment rate of 36%. The youth aged 15-24 years are the most vulnerable in the South African labour market as the unemployment rate among this age group was 55.2% in the 1st quarter of 2019.

Legalisation and carefully thought out, evidence-based regulation presents an opportunity to develop rural and township economies simultaneously and strengthen the agricultural and industrial sector, naturally resulting in employment generation and the promotion of entrepreneurial activity.

The issue of Cannabis law reform also presents a unique and desperately needed opportunity to rightfully frame regulations as an issue of criminal justice reform, equity, racial justice, economic justice and empowerment, particularly for communities most targeted by excessive enforcement of Cannabis laws. The current potential for the legalisation of Cannabis in South Africa has been brought about through active citizenry on the part of Cannabis users, cultivators and traders representing all sectors of our society.

7. CONCLUSION

In the MTBPS¹⁷ it is stated that the ***"government's economic policy priority is to enact reforms that will enable South Africa to break from the spiral of anaemic growth, promoting investment and job creation."*** Fields of Green for ALL submits to this committee that serious and careful consideration be given to the appropriation of excess funds from government departments be used for the development of a fully inclusive, vibrant and internationally ground breaking Cannabis industry.

¹⁶ <https://fieldsofgreenforall.org.za/regulations/>

¹⁷ <http://www.treasury.gov.za/documents/mtbps/2019/mtbps/FullMTBPS.pdf> page 4